TESTIMONY OF ELLWOOD R. KERKESLAGER
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BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
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AT&T appreciates the invitation to testify before the subcommittee today about the nation's progress in delivering advanced services to consumers and in building the infrastructure that will support the delivery of such services in the future. In the historic Telecommunications Act of 1996 (the Act), the Congress recognized the potential for advanced services to become a critical part of the nation's economic and social fabric. It therefore directed the Commission in Section 706 to initiate an inquiry by August 8, 1998 to examine whether advanced telecommunications capability is being deployed to all Americans "in a reasonable and timely fashion." The Commission has indicated that it will open such an inquiry by early summer, and AT&T looks forward to participating fully in that proceeding. In the meantime, several Regional Bell Operating Companies (RBOCs) have petitioned the Commission for "waivers" under Section 706 of their fundamental – and non-waivable -- obligations under other provisions of the Act (Sections 251 and 271) to open their local networks to competition and to ensure that those networks are open before they may enter the long distance market. As we discuss below, those petitions should be seen for the sham filings that they are.

A Look at the Marketplace

The growth in the use of online services, and the capability of the nation's longhaul communications networks to deliver them at ever-higher speeds, has been extraordinary over the past few years. A study released by the Department of Commerce earlier this month, titled *The Emerging Digital Economy,* quantifies the growth of the Internet and in doing so, paints a

remarkable picture of the role of the Internet in American life. According to the report: the number of people using the Internet grew from 5 million in 1993 to 40 million in 1996 to 100 million by the end of 1997 (pp. 2 and 8), and traffic on the Internet has been doubling every 100 days (p. 8). The number of top-level commercial domain names (.com) that have been assigned grew from 27,000 in early 1995 to 764,000 by mid-1997 (p. 8). Consumers are buying everything from books to cars to tickets and much more over the Internet. Amazon.com's book sales shot up from $16 million in 1996 to $148 million in 1997, while a company called Auto-by-Tel was selling $500 million worth of cars each month by the end of November 1997 (p. 2). The Department of Commerce further reports that in recent years, information technology companies have been responsible for more than 25% of real economic growth. (p. 6). Online services have taken a front seat in the economy, and Americans are using them enthusiastically.

Investment in the Internet backbone networks that are needed to support this new world is continuing at a rapid clip. In January 1998, AT&T announced plans to install dense wavelength division multiplexing (DWDM) technology – which uses light to magnify transmission -- to expand the bandwidth of our 40,000 mile existing network by a factor of up to 10, without having to lay additional fiber-optic cable. MCI and UUNet quadrupled their backbone capacity in 1997, and the major backbone providers have plans to quadruple capacity again.[23793] Qwest announced last week the activation of its entire coast-to-coast IP network, giving it 5,400 route miles in service. It plans to complete its 16,000 mile fiber network in mid-1999, serving over 125 cities which represent

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[23793] "Sprint Dramatically Boosts Speed and Bandwidth on its Internet Network," Sprint Press Release, September 3, 1997 ("By deploying the Cisco 12,000 series [of router], Sprint will increase bandwidth 400 percent by running live traffic over full-line speed OC-12 connections. . ."). In late 1997, AT&T itself introduced and invested in the first phase of a robust IP backbone designed to deliver both dedicated and dial-up IP-based services. See "AT&T IP Backbone: Giving Business the Edge," October 1997, www.att.com.

about 80 percent of the voice and data traffic originating in the United States.[0] Level 3 expects to build a 20,000 mile fiber network by 1999 and will also be leasing capacity along from Frontier's 13,000 mile fiber-optic backbone, giving it access to 15 major U.S. markets. Williams has construction plans to expand its network to 20,000 miles within a year; and IXC, Worldcom and Metromedia all have plans for similarly sized high speed networks in the 1998/1999 time frame.[26154]

THE RBOCS' LATEST GAMBIT TO AVOID THE ACT'S UNBUNDLING AND RESALE REQUIREMENTS

It is against this backdrop of extraordinary growth and investment that the RBOCs have filed their 706 petitions seeking the ability to offer broadband services without regard to unbundling and resale requirements for advanced services or interLATA services restrictions. In exchange for this broad relief, Bell Atlantic purports to promise "a regional backbone network, capable of providing Digital Subscriber Loop ("DSL") or fiber-based services, that passes most homes in the major markets in its region." In essence, the RBOCs request that they be allowed to "trade in" their existing monopoly over "traditional" telephony services, for a new monopoly over both traditional and "advanced" telecommunications services, which the Act is also designed to open to competitors.

These petitions to the Commission offer neither a statutory basis for the broad relief that they request, nor persuasive factual or policy support. The RBOCs are in essence seeking a risk-free environment in which they can enlarge their existing monopoly in the local exchange to include high-speed services to the home and business, and at the same time leverage their monopoly into the booming market for Internet backbone capacity. Even if the Commission had the authority under the Act to grant the requested relief to enable the RBOCs to undertake these efforts (which it does

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[2] Qwest Corporate Release, April 13, 1998

[26154] BancAmerica Robertson Stephens, Network Industry, February 23, 1998; Bear Stearns Industry Update, March 30, 1998.

not), such relief is not justified as long as they retain their monopoly hold on local exchange and exchange access services.

Indeed, the very companies that the RBOCs would claim to assist – online service providers – have seen through the RBOCs' petitions and do not support them. This alone should make policymakers take notice. For instance, a group of retail ISPs (APK Net, Cyber Warrior, Helicon Online, Inforamp, Internet Connect Company, Javanet and Proaxis), who collectively serve over 80,000 end users, told the Commission: "the retail Internet service providers (ISPs) filing these comments agree that the public interest would be served by rapid deployment of high-bandwidth Internet access to residential and small business customers on affordable terms. *We could not disagree more strongly, however, with the idea that the particular relief that the RBOCs seek will advance that goal*" (Comments, p.2, emphasis supplied). Likewise, the Commercial Internet eXchange Association, which represents over 150 ISPs who handle over 75% of the United States' Internet traffic, states: "Internet competition and innovation is best served through a regulatory structure that permits broad access to the incumbent LEC's network. *Bell Atlantic's approach, by contrast, would close its network to competitive providers*" (Comments, p. i, emphasis supplied)

What has become clear in the two years since the Telecom Act was passed is that, for at least the foreseeable future, the <u>only</u> path to broad competition for virtually all residence and most business customers is the resale and unbundling of the incumbent local exchange carrier's (ILEC's) local network. Competitive local exchange carriers (CLECs) will need full and fair access to those ILEC facilities if broad competition is to emerge. This is the case not only for "plain old telephone service," but for advanced services as well, because the building blocks of advanced services such as ISDN and xDSL include the very same ILEC local loop and, separately, the ILEC local switch used for routing of voice calls over the public switched telephone network. In addition, specialized

network elements such as modems must be unbundled in order for CLECs to offer advanced services.

The RBOCs ignore this simple fact, asking that they not be required to offer these new services to their competitors via purchase of unbundled network elements or resale at any price. Their purported justification for this requested relief is that its incentive to make the necessary investments will be dampened if it is required to share the "reward" from the success of these services. As noted above, however, this ignores the fact that these services utilize facilities and equipment in the RBOCs' existing local networks which are "network elements" and to which CLECs have a statutory right to gain access. Thus, granting the requested relief would not create the investment incentives that the RBOCs claim, but would instead enable them to behave in an unchecked, anticompetitive manner.

In fact, the RBOCs do not need the requested relief in order to deploy advanced services in their home territories. They are already investing heavily today in installing broadband capabilities in selected markets in major metropolitan markets. Ameritech is already offering ADSL service in two cities (Ann Arbor, MI and Royal Oak, MI) and has said this service will be offered to 7 out of 10 Ameritech local phone customers over the next 2-1/2 years.[0] Bell Atlantic has recently committed $1.5 billion to investing in broadband capabilities and awarded contracts to five vendors. This is also the case for U.S. West, which has announced plans to roll out DSL service in Phoenix, AZ beginning this summer and to extend it to other selected markets by the year 2000.[29299] U.S. West Communications' President recently told the financial community that U.S. West's strategy is to focus on building its data business targeted at high growth "Internet oriented" cities such as Denver,

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[0] PR Newswire via Dow Jones, April 16, 1998

[29299] Dow Jones Newswire, April 20, 1998.

Minneapolis, Phoenix and Salt Lake.[0] These activities demonstrate that the requirement of forward-looking cost-based pricing is not inhibiting the RBOCs' investment. Rather, they simply do not want to share their incrementally-priced services with their potential competitors, even though their low incremental costs are a product of their monopoly plant.

In fact, giving the RBOCs the freedom to act to foreclose competition will extend well beyond Internet services, and will include voice, fax, data and any other service and application carried over traditional local exchange technology as well. As the RBOCs well know, a high-speed access connection to the home or business that is the subject of its petition is entirely capable of carrying all of a customer's traffic, including voice. Once a home or business purchases such access connections, there is no need for it to maintain a separate telephone line or service for its voice/fax/data calls. To the contrary, the higher bandwidth connections already provided by the RBOCs in the form of ISDN and their planned use of DSL utilize the customer's existing twisted copper pair loops (as also requested by CLECs), and accomplish their greater speeds and capacity through conditioning of these loops and equipping them on either end with high speed modems (ISDN or xDSL). There is thus no need beyond this high speed line for the customer to retain (or purchase) other standard phone lines, because all of his/her traffic can be accommodated over the bigger "pipe."

By receiving forbearance to offer these services, the RBOCs would thus "raise the stakes" in the local exchange market, by being able to offer uniquely both traditional and advanced services over one "deregulated" pipe, free of resale, unbundling, pricing and other reasonable obligations before there is any meaningful competition in the local market, and thereby choke off local exchange competition before it can even emerge. In fact, Bell Atlantic has acknowledged as much in its

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[0] Communications Daily, March 23, 1998.

opposition to the proposed WorldCom/MCI merger. There, Bell Atlantic has argued that the merged entity could exert monopoly power over Internet backbone facilities and has stated that the appropriate relief would be the adoption and enforcement of conditions on the merger similar to the requirements of Section 251.[3705]

The RBOCs Have Not Complied with Sections 251(c) and 271 For Even Basic Telephone Service.

Thus it is critical that the Commission ensure that the requirements of the Telecom Act are implemented as the Congress intended, not evaded. The 1996 Act requires the RBOCs to open their local monopolies to competition before they are allowed to provide interexchange services. The RBOCs' extraordinary resistance to that mandate is well documented. It has been extremely difficult, both from a technical and economic perspective, for CLECs to obtain the network elements from the RBOCs that they require to create their own high-speed services.

Bell Atlantic's petition to the FCC exposes its long-standing adamant refusal to provide DSL capable loops to its competitors. Despite the clear finding in the Commission's Local Competition Order that the definition of unbundled loops must include loops "conditioned to . . . provide services such as ISDN, ADSL, HDSL, and DS1-level signals" (¶ 380), Bell Atlantic has steadfastly refused to provide such loops to its competitors. The pre-merger Bell Atlantic took the position that because HDSL and ADSL services were not commercially available on a retail basis to Bell Atlantic's end user customers, it had no obligation to make HDSL and ADSL-conditioned loops available as an unbundled network element. Subsequently, Bell Atlantic agreed to make such

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[3705] In the Matter of Applications of WorldCom, Inc. and Howard A. White, Trustee, for Transfers of Control of MCI Communications Corporation and Request for Special Temporary Authority, CC Docket No. 97-211, Petition of Bell Atlantic to Deny the Application of WorldCom or, in the Alternative, To Impose Conditions, filed January 5, 1998, p. 2.

loops available only after it was already offering HDSL or ADSL services to its end user customers. Now, on the heels of an announcement regarding an alliance between the BOCs and the computer industry which will both ease and reduce the costs of deploying ADSL *("PC, Telecom, and Networking Industry Leaders United to Deliver Ultra-Fast Internet Access to the Home,"* Press Release, January 26, 1998, www.uawg.org*),* Bell Atlantic filed its Section 706 petition which, among other things, seeks an exemption from the requirement that it make the critical electronics of these services available to competitors and from the resale requirement for the xDSL services themselves. Bell Atlantic's flagrant attempts to avoid its obligations under the 1996 Act should not be rewarded.

Indeed, CLECs cannot even get access to the underlying "raw" unbundled network elements -- the local loop is one example and the local switch is another -- from the incumbent LECs at reasonable underlying economic costs to provide basic POTS services, much less the new generation of high capacity services. For example, in violation of the terms of its interconnection agreements in a number of states and in breach of its obligations under the Act to provide nondiscriminatory access to unbundled network elements, Bell Atlantic has unilaterally attempted to impose inefficient collocation requirements on all CLECs for the purpose of combining unbundled network elements. Not only is this requirement unlawful, but Bell Atlantic's record of making collocation available is abysmal. For instance, in Maryland, Bell Atlantic offers physical collocation in only 26 of its 207 central offices and virtual collocation in only 7 others. It routinely represents that it has space constraints in many of its central offices and in other central offices, its provisioning intervals are unduly lengthy. In the pre-merger Bell Atlantic states, for instance, Bell Atlantic's collocation interval is 120 business

days.

In addition, Bell Atlantic's operational support systems ("OSS") are woefully inadequate. BA-NY, for example, has not made available all of the technical specifications, business rules, and other technical and administrative information necessary for CLECs to complete the necessary OSS interfaces, and testing of Bell Atlantic's OSS in the pre-merger Bell Atlantic states has shown that Bell Atlantic is unable to handle even a minimal amount of orders, much less the volumes required for competitive entry. The inability of CLECs such as AT&T to obtain the elements necessary to provide traditional telephony services forecloses their ability to compete with Bell Atlantic for those services, let alone for the advanced digital services which are the subject of Bell Atlantic's petition.

In contrast to the severe difficulties of gaining access to network elements and securing reasonable and affordable collocation just for traditional telephony services, the RBOCs and other ILECs can easily deploy advanced telecommunications services by inserting electronics and modem cards directly into their central office switches or as adjuncts thereto and thus gain the efficiencies and cost savings of integrated services. As long as the ILECs can integrate these new services into its embedded plant and equipment, they will have an inherent competitive advantage over new entrants, advantages that the 1996 Act requires be shared among competitors. This advantage is readily acknowledged by Bell Atlantic in its White Paper:

> The Bell Companies have some of the right incentives to invest in these [high-speed digital access] technologies. They allow the telephone companies to earn new revenue out of existing plant with only incremental costs. This helps them avoid deploying costly new transmission facilities. (Attachment 2 to Bell Atlantic's 706 Petition)

It is this critical aspect of the monopoly LEC's network -- the fact that it, and it alone, can

offer the scale and scope (and resulting lower unit costs) -- that underlies the unbundling and resale obligations of Section 251 of the 1996 Act. If emerging competitors are forced to replicate the ILECs' networks in toto, from scratch -- especially when they start with no embedded customer base -- they will never be able to enter the market with competitive offers and competitive prices.

The RBOCs are well aware of the leveling effect of Section 251's pricing requirements. It is precisely to take advantage of its inherent economic advantages that they ask to be relieved entirely from any resale and unbundling obligation for advanced services. However, the very purpose of Section 251 is to require the ILECs to share their network efficiencies with their potential competitors. This is entirely appropriate, because the ILECs developed and deployed their networks on monopoly revenues. Although Bell Atlantic boasts that almost 94 percent of its switches are digital, it has SS7 capability on at least 94 percent of its lines, and it has deployed packet-switching capabilities in nearly 40 percent of its end offices, it neglects to mention that all of these improvements have been funded by protected monopoly revenues from local exchange and exchange access services.

Freed of the Section 251 unbundling and resale obligations, Bell Atlantic could load the bulk of its network costs onto its regulated entity, continue to receive monopoly returns on those costs, and price its advanced telecommunications services to its end user customers on the basis of incremental cost alone. At the same time, it would not have to offer the "advanced" unbundled network elements or wholesale services <u>at all</u> to its competitors (let alone at cost-based rates). This would eliminate any possibility of local competition in Bell Atlantic's territory, leaving Bell Atlantic free to offer less desirable services at inflated prices. (Notwithstanding the relative ease of deployment of ISDN for an ILEC such as Bell Atlantic, the ILECs have been painfully slow in implementing this 20-year old technology in their territories). Such a result is plainly contrary to the

overarching mandates of the Act and any notion of the "public interest." In stark contrast, the interexchange marketplace offers these same and more advanced technologies --stimulated by a robust competitive market and not cushioned by monopoly revenues. These healthy investment decisions -- and their associated risks and rewards -- should not be distorted by allowing an incumbent monopolist to leverage that power and stifle emerging local competition, let alone to leverage that power into the interexchange market.

Extending the RBOCs' Market Power Into InterLATA Internet Services Will Not Create A More Competitive Internet Backbone Market.

Allowing the RBOCs to provide interLATA Internet services will not create a more competitive market for Internet backbone services. Bell Atlantic's purported justification for its request for a waiver of Section 271-- that the Internet backbone suffers from severe network congestion and that Bell Atlantic's entry into that market would solve that capacity problem -- is not accurate on either count.

Any congestion on the Internet backbone facilities pales in comparison to the degraded throughput that users experience due to choke points in the local network resulting from the ILECs' failure to upgrade their local facilities to accommodate broadband services. Indeed, Bell Atlantic is one of many ILEC commenters that warned the Commission of the threat of local "network congestion" as a result of the paucity of packet-switched local access alternatives.

Bell Atlantic's own White Paper explains that congestion can occur in the local access facilities, the Internet Service Provider's ("ISP's") equipment or interconnection facilities to the Internet backbone, and specific websites and connections to the websites, as well as on the Internet backbone transport facilities. As to the Internet backbone, congestion can occur at the Internet Network Access Points, where peering arrangements (or the lack thereof) can cause Internet connections to fail. Congestion on the Internet backbone's transport and routing facilities

themselves is only one minor source of strain on the Internet, is being resolved by the significant investment noted earlier (at page 2) and is not a problem that requires entry by a monopoly RBOC to address.

Despite this dramatic investment, Bell Atlantic claimed in its petition that congestion on the Internet backbone's transport facilities has slowed transmission speeds to 40 Kbps. Bell Atlantic's claim is based on a highly controversial index.[0] In fact, there is ample evidence that the Internet is fully capable of carrying traffic at speeds that well exceed 40 Kbps. AT&T's own cable modem trials were conducted at average speeds of 400-700 Kbps. The cable ISP, @ Home, advertises that it typically operates at speeds in the range of 1,500-3,000 Kbps.[38956] Time Warner's cable modem service in San Diego also operates at significantly higher speeds -- 10 Mbs downstream and 1.5 Mbs upstream -- which Time Warner claims that its users are fully capable of achieving.[0] The ubiquity of these successful broadband trials confirms the availability of average speeds over the Internet backbone well above the maximum available over the local loops of Bell Atlantic (i.e., 56 Kbps), and strongly suggests that any congestion experienced by customers is in the ILECs' local loops, which plainly have not been upgraded to meet demand.

So long as the RBOCs retain a dominant market position in the local exchange, their entry

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[0] Petition at 13 and Attachment 2, p. 22. Several Internet access providers have criticized Bell Atlantic's source, Keynote System Inc. Backbone Performance Index. Inter@ctive Week, "Backbone Survey Takes on Keynote," February 23, 1998. One such provider, Net Access Inc., plans to use different methodology to measure Internet backbone performance; the results of this study, expected this month, should be materially different. See www.netperf.net

[38956] See www.home.net.

[0] BancAmerica Robertson Stephens – Network Hardware Research Group, "The First Mile – Release 1.4," February 23, 1998.

into the interexchange market has much more potential to impede competition than foster it. Bell Atlantic is unabashed in its plans to leverage its market power. According to Bell Atlantic, allowing it to provide Internet backbone services

> would expand Bell Atlantic's ability to sell other complementary products to consumers. These include not just xDSL services, but also the second or third lines that consumers often seek for their Internet services. Additional incentive to invest would come from the resulting boost to Bell Atlantic's own Internet-access service itself, which has been uniquely hobbled by the fact that the customers of Bell Atlantic, unlike other providers, must obtain a separate interLATA provider.[0]

With the ability to bundle Internet services with both advanced and traditional basic telephone services (relief that Bell Atlantic implicitly requests), Bell Atlantic would foreclose competitors in each of these markets from constructing a viable competitive offer. No Internet provider or CLEC could compete with a Bell Atlantic offer of free Internet service with purchase of a DSL service. And that arrangement would not alleviate the Internet backbone congestion problem that Bell Atlantic cites as its justification to enter the market free from any restrictions on its existing market power in the local exchange.

The Act Wisely Provides that the Commission Cannot Forbear from Fully Implementing Sections 271 and 251(c)

The RBOCs do not dispute that Sections 251(c) and 271 of the Act, by their terms, prohibit them from providing both local and interLATA broadband services in the manner they propose in their petitions to the Commission. Instead, they argues that Section 706 of the 1996 Act permits the Commission to eliminate any and all statutory requirements the Act imposes on carriers, including Sections 251(c) and 271, so long as the Commission acts in the service of advanced telecommunications.

This argument is foreclosed by the plain text of the Act. Section 706 provides that the

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[0] Petition at 16.

Commission shall "encourage" advanced telecommunications services through, among other tools, the Commission's "regulatory forbearance" authority. This is plainly a reference to the Commission's authority under Section 10, a new section in the Communications Act which the Congress created as part of the 1996 Act to waive regulatory or statutory requirements under specific circumstances. In Section 10, the Congress expressly excluded the power to waive the requirements of Sections 251(c) and 271, as follows:

> Except as provided in section 251(f) [which pertains to small rural carriers], the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

Section 271 itself also confirms that Section 706 did not give the Commission authority to waive its requirements. First, Section 271(a) provides that the terms of that section -- and that section alone -- govern BOC provision of interLATA services.[0] Second, Section 271(d)(4) states that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)," yet that is precisely what Bell Atlantic is asking the Commission to do. Even if, as the RBOCs suggest, Section 706 stands on its own, its general terms are not broad enough to support a waiver of Sections 251 and 271 when those specific sections have been otherwise placed beyond the Commission's forbearance authority.

The RBOC'S Request Would Undermine Congressional Policy To Promote A Robustly Competitive Telecommunications Market.

Not only would Bell Atlantic's petition, if granted, run counter to the statutory scheme established by Congress for opening of RBOC local exchange monopolies and RBOC entry into

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[0] 47 U.S.C. § 271(a) ("Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.") (emphasis added).

interLATA markets as discussed above, it is entirely inconsistent with Congressional mandates, Commission policy and the public interest.

First, Bell Atlantic's broad request for special treatment for the provision of "high-speed broadband services" runs counter to the pro-competitive, technology-neutral policies of the 1996 Act. In other contexts, the Commission has adopted a technology-neutral policy to allow the marketplace to direct the advancement of competitive services.[0] In contrast, Bell Atlantic's proposal would free Bell Atlantic to direct its investment decisions to its new technology services to the detriment of its traditional services -- the latter of which would be the only ones available to its potential competitors for purchase of UNEs and for resale. Thus, both Bell Atlantic's competitors and end user customers would suffer from the lack of competitive alternatives resulting from the grant of technology-focused (and not competition-focused) relief.

Second, Bell Atlantic's claim that "Section 271 is not undermined or compromised by allowing the limited interLATA relief sought here"[1] is simply untrue. Contrary to its assertion that it is requesting limited high-speed data relief, as discussed herein, grant of the requested forbearance authority would enable Bell Atlantic to provide all telecommunications services to its customers on an interLATA basis, including voice, video, fax and data over the same broadband pipe. Having achieved de facto 271 relief, Bell Atlantic would have no incentive whatsoever to meet the competitive checklist to implement local entry. Bell Atlantic's self-serving assertion that it "would

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[0] See, e.g., In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, rel. May 8, 1997, ¶¶ 47-49 ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor one technology over another").

[1] Petition at 19.

not have agreed to the merger commitments if its strategy were to defer achieving checklist compliance" is as meaningless as it believes its merger obligations are. As AT&T has demonstrated in its pending Section 208 complaint proceeding before the Commission, Bell Atlantic has violated its merger obligations, and its interpretation of those obligations would render them a nullity.[0]

Furthermore, Bell Atlantic's claim that it "does not have the same alleged anticompetitive potential or unfair or special advantages entering the Internet and high-speed data market the Commission has thought Bell companies might have entering the regular long-distance market"[0] is plainly wrong. Bell Atlantic may well provide Internet access service to only a small portion of the subscribers to all Internet access services, as it claims. However, it provides local service to virtually 100 percent of the Internet subscribers in its territory, and connectivity to virtually all the ISPs in its territory. Thus, every Internet access customer and virtually every ISP is also a customer of Bell Atlantic's monopoly local services. Accordingly, Bell Atlantic could easily and quickly market a bundled offering to its existing customer base -- one that no ISP, CLEC, or IXC could match, especially if Bell Atlantic succeeds in having its "packet-switched" services sheltered from interconnection and resale requirements, with severe anti-competitive consequences for those competitors

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[0] AT&T Corp. v. Bell Atlantic, File No. E-98-05, (complaint filed Nov. 4, 1997). For example, Bell Atlantic has taken the position in the complaint proceeding that its obligation to propose prices for UNEs based on forward looking economic costs applies only to proposals first made after August 14, 1997, despite the fact that the Merger Order states that "Bell Atlantic's and NYNEX's proffered commitments, and the conditions we impose, are not limited to interconnection agreements that are executed after approval of the Merger." In the Applications of NYNEX Corp. Transferor and Bell Atlantic Corp. Transferee For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order, File No.
NSD-L-96-10 (Aug. 14, 1997); see also id. ¶185; id. n.347; id. Appendix C, Condition 9.

[0] Petition at 20.

Finally, Bell Atlantic's reliance on the existence of cable, wireless and satellite services as viable competitive local service alternatives is grossly premature. Alternative broadband technologies are not likely to compete with any ILEC-offered DSL services in the near term. According to International Data Corporation ("IDC"), ILECs have "a fair amount of breathing room with respect to introducing DSL service" because cable companies have not been able to deploy cable modem technology either quickly or ubiquitously, obtaining only 100,000 cable modem subscribers by the end of 1997.[0] Additionally, "the cost of the required access network upgrades to support modem service will hold back wide availability of cable modem service" as cable operators install fiber in their access networks at a fixed cost that IDC estimates to be on the order of $100 billion to cover all of the cable systems in the country.[0] "Cash-strapped cable companies will require years to perform these upgrades, with the result being that cable modem service will be available only in pockets across the U. S. In contrast, DSL does not require massive investments to upgrade the access network."[0] Thus DSL can be provided on a phased basis as customers demand the service.

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[0] IDC Report, "DSL Market Gains Direction," January 1998, p. 5.

[0] Id.

[0] Id. Bell Atlantic admits the lack of competitive broadband alternatives in its own filing: "Cable and wireless providers likewise have invested far less capital, and built far less network. Cable companies have deployed few switches of any kind, and have not linked in to the nationwide digital signaling system (SS7) at all. Only 10 to 20 percent of cable subscribers are served by networks that have been upgraded to support two-way traffic. Test of cable modems are under way, and a few companies already offer commercial service, but these initiatives remain small and localized for now. Only about 15 percent of cellular networks are digital. Wireless data services remain quite limited, expensive, and slow. Cellular Digital Packet Data (CDPD) services are being rolled out slowly, and are currently used by only about 10,000 customers." Id. at Attachment 2, p. 49 (footnotes omitted).

Any real competition from satellite and wireless companies, particularly for two-way interactive services, is still years away as well, as those technologies have yet to be developed and broadly deployed.[0] This suggests that Bell Atlantic (and the other ILECs) are in a powerful position to hold back the introduction of broadband services to business and residential customers until the emergence of real competitive alternatives, and thereby delay rather than hasten their market introduction.[0]

The ILEC Must Divest Any Entity That Provides Advanced Telecom Services, Before That Entity Can Be Deregulated

If the RBOCS are serious about obtaining regulatory relief of the scope suggested in their 706 petitions, the Commission may want to explore the possibility -- suggested by both Level 3 and LCI in their comments opposing Bell Atlantic's 706 petition -- of allowing the ILECs to create a separate company for the provision of advanced telecom services. As Level 3 explained, for such a company to be truly separated from the ILEC's existing operations -- in essence for the company to be on a truly equal footing with CLECs -- it must be a totally divested entity that is not commonly owned with the ILEC; that has a separate board than the ILEC; that must purchase access to UNEs and resale like any other CLEC; that can obtain no collocation that is not offered to other CLECs; that obtains the same pricing as other CLECs; that, in essence, comes to the market just like any other CLEC seeking access to the monopoly facilities of the incumbent monopolist, and is answerable to a board and shareholders that do not have mutual interests with the monopolist. Only

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[0] IDC Report, p. 6.

[0] See, e.g., Jupiter Study at 31 ("Currently, the RBOCs have a stranglehold on high-speed Internet access via leased lines by virtue of their ownership of the local loop. The RBOCs will have little reason to invest in ADSL for business use until businesses have options for high-speed access besides leasing T1 and ISDN lines").

upon such complete divestiture could the Commission conclude that such operations are indeed "separated" and conceivably consider granting the RBOCs regulatory relief for advanced services along the lines that they request.

CONCLUSION

The RBOCs' petitions, if granted, would stop competition in the local exchange market before competitors even gain a foothold; it would enable them to extend their existing market power into the interexchange market, contrary to the express intent of Congress in adopting Sections 251 and 271 of the 1996 Act; and it would do nothing to address the real competitive concerns of the Internet backbone market.

Stripped of the superficial appeal of "bringing Internet services to the home," the RBOCs' Section 706 filings are nothing more than a request by monopolists to introduce new services into their existing monopoly market without any competitive safeguards, and to leverage their market power into the interexchange market as well. Surely the Congress did not spend a decade of effort to amend the Communications Act for the first time in 62 years, only to have the key provisions of the Act circumvented by the RBOCs' petitions.